

Statement from ASQA

In December 2014, ASQA and the Australian Federal Police commenced Operation Aristotle, a joint investigation into intelligence regarding possible fraudulent activity. Evidence gathered through this joint operation, that included audits of each provider, led to the convictions of Baljit Singh, Rakesh Kumar, Mukesh Sharma and Rekha Arora and to the closure by ASQA of the St Stephen Institute of Technology and the Symbiosis Institute of Technical Education. The outcome of this operation demonstrates the effectiveness of ASQA's scrutiny of these providers.

ASQA regularly shares information with other government agencies, including law enforcement agencies and other regulatory agencies such as the ACCC. ASQA and the AFP have co-operated in a number of investigations relating to ASQA-regulated providers. ASQA has initiated and secured criminal or civil convictions for breaches of its legislation on nine occasions.

ASQA refutes the suggestion that it has failed to make use of infringement notices as appropriate, at any time. (Note that it was not possible for infringement notices to be issued under the NVR Act prior to 3 April 2015, as the necessary regulations were not in place. Infringement notices for failure to comply with data provision requirements were only able to be issued from 1 September 2018).

ASQA regularly receives information and intelligence about providers and encourages that information to continue to be provided from a range of sources. We assess that information and investigate and/or take regulatory action appropriately.

The AAT process is one of merits review, where providers are able to submit additional evidence that non-compliances have been addressed subsequent to ASQA's decision. As such, the review of a decision by the AAT is not one of whether the original decision was correct, but is a process of considering what the correct decision is at the time the AAT makes it.

Since the time ASQA has been operating (1 July 2011) and 30 June 2018, 484 ASQA matters have been finalised by the AAT. The majority of these (53%) were resolved between ASQA and the provider, inevitably following the submission of additional evidence that identified the non-compliances leading to the decision had since been rectified. A significant number (29%) were withdrawn by the applicant. Only 32 matters have proceeded to a contested hearing and, of those, ASQA's decision was affirmed on 21 occasions and set aside or varied on 11 occasions.

In the matter of Brighton Pacific, ASQA has lodged an appeal of the AAT's decision in the Federal Court.

Having strengthened our risk based approach to focus our activities on those considered more likely to be non-compliant, it follows that the proportion of adverse decisions would increase.

ASQA refutes any suggestion that it makes incorrect decisions to cancel a provider. The process of escalating delegations (sanctions such as this are only applied by one or more Commissioners) and various quality checks ensure that recommendations are well tested before being acted on.

ASQA refutes any suggestion that it has 'turned a blind eye' to poor behaviour by any provider.

The risk based approach to regulation employed by ASQA considers the risk posed by a provider based on a range of data and intelligence, which informs selection for compliance activities. A number of very large providers have been subject to adverse decisions by ASQA, including cancellation.